The defendants were ordered to pay the plaintiff's costs as taxed.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Shook Lin & Bok.*

ANG HOCK LEONG & ORS. v. TRUSTEES OF SANDILANDS BUTTERY LOCAL STAFF PROVIDENT FUND & ORS.

[O.C.J. (Winslow J.) August 5, 1965]

[Singapore — Originating Summons No. 42 of 1965]

Provident Fund — Whether a society or not — Whether majority of members can apply for dissolution.

The applicants on behalf of themselves and other members of a staff provident fund representing a majority of members of the fund, applied for the dissolution thereof and payment out to them of the amounts standing to their credit. The fund was constituted by a trust deed and was vested in and administered by the named trustees under rules annexed to the trust deed.

Held: (1) it was impossible on the facts to regard the fund as a society which can be dissolved at the request of the majority of its members;

(2) the fund was a trust in the nature of a superannuation trust for the benefit of members on their retirement and could be wound up only in the circumstances set out in the rules.

Quaere: Whether the fund can be dissolved by the unanimous vote of all its members.

Cases referred to:—

(1) *In re Lead Company's Workmen's Fund Society* [1904] 2 Ch. 196.

(2) *In re Victoria Society* [1913] 1 Ch. 167.

ORIGINATING SUMMONS.

Lim Chor Pee for the applicants.

T. H. A. Potts for the respondents.

Winslow J.: By this originating summons the applicants, on behalf of themselves and 159 other members of the Sandilands Buttery Local Staff Provident Fund, thus representing the vast majority of members of this fund, apply for a dissolution thereof and the payment out to them of the amounts standing to their credit.

The said fund was established by the 2nd and 3rd respondents by a trust deed dated 17th December, 1952 and was vested in and administered by named trustees under rules annexed to the trust deed.

In the middle of 1964 the Comptroller-General of Inland Revenue requested the respondents to amend the rules of the fund to accord with certain conditions of approval of the fund as an "approved fund" for the purposes of the Income Tax Ordinance, which had been communicated previously by circular C.G. 24 dated 15th April, 1964.

The applicants are dissatisfied with the proposed amendments on the ground that their accrued rights may be adversely affected and have accordingly brought the present application for the dissolution of the said fund in order to get back what is due to them before their rights are altered. It is pertinent to note that the trust deed by clause 11 expressly provides that the trustees shall especially have power to vary the trust deed or rules to conform with the requirements from time to time of the Comptroller-General of Income Tax, Malaya.

Reliance has been placed on the cases of *In re Lead Company's Workmen's Fund Society* (1) and *In re Victoria Society* (2) for the proposition that the court has jurisdiction to interpose by ordering a dissolution of such a fund if a large majority of members ask for a dissolution thereof where no provision for winding-up exists.

It is no doubt true that the vast majority of the members of the fund (i.e. 164 out of 172) want a dissolution, but the question arises whether this fund can be held to be a society such as the unregistered friendly societies in the two cases cited above.

Counsel for the applicants submitted that it did not make the slightest difference whether the fund can be said to be a society or not. I find this proposition somewhat puzzling because if the fund is not a society then these cases will not help him at all. (I take that it is not registered under the Societies Ordinance (Cap. 228)). What I think he really meant was that the fund was in fact a society such as the societies in the two cases cited, because it is only if the fund is such a society that the court has power to interfere and wind it up at the request of the vast majority of its members.

I agree that there are many similarities between the fund in the present case and the societies in the above cases, and I have also borne in mind that the mere fact that a fund is not described as a society will not prevent it from being held to be a society if, in fact, it is a society.

In the case of *In re Lead* above the society existed for the benefit of certain workmen in the company and although the governor and company were trustees of the funds standing to the credit of the society, the society itself was managed by a general committee assisted by a finance committee and certain local committees. The governor and company were merely custodians of the invested funds and were therefore, custodian trustees at the very most and not managing trustees. Membership of the society was confined to workmen, etc. in the employment of the company. The funds *belonged* to the members of the society. The rules of the society

could be varied from time to time and the company would appear to have had no controlling interest or, indeed, any other interest in the society itself and, in fact, at the hearing of the action the company took no part in the argument and expressed its willingness to retire. Finally, in this connection, it should be observed that in exercising its discretion to intervene by winding up the society the court seems to have placed great reliance on the fact that the employer-company had ceased to carry on business and that the society was also insolvent. The substratum on which the society was founded had therefore, ceased to exist. These factors are non-existent in the case of the present fund.

In the present case the members of the fund take no part, as members, in the administration of the fund which has been left in the sole charge of the trustees who are to administer it under and in accordance with the rules. In fact the members have no say in its administration at all and no provision whatsoever exists for them to meet like members of any ordinary society, to pass resolutions of any kind or to vary the rules. In fact the members do not have any executive body or committee to manage their affairs nor are they associated with one another in such a way as to give them even the semblance of an association or society of any kind. How they can successfully claim to be members of a society seems to me to be beyond comprehension.

The fund itself is regulated by rules which bind members. In fact employees before becoming members are required to sign an undertaking to be bound by the trust deed and the rules. Moreover the trustees have a sole discretion in the matter of admitting an employee to membership.

Contributions received from a member are credited to his "A" account and contributions by the employer to his "B" account.

The employers have a lien over his "A" account for any debts due by a member or losses caused by his fraud or negligence, but the trustees have an absolute and uncontrolled discretion, notwithstanding the rules providing in certain cases, for forfeiture of his "B" account to pay him the whole or part of it. Further, members have no right to inspect the books of the employers or trustees though annual statements are required to be supplied to them of the amounts standing to their credit.

Save in accordance with the rules, no member has any right to the amounts standing to his credit nor does any member have power to assign his interest in the fund.

Provisions such as those make it quite clear in whom the control over the fund lies particularly when regard is had to rule 26 which categorically states that in all matters the decision of the trustees or of the company, as the case may be, shall be final.

In view of these matters it is impossible to regard this fund as a society which can be dissolved at the request even of the vast majority of its members. It is a trust in the nature of a superannuation trust for the benefit of members on their retirement.

As rule 14 provides, no member *so long as he is in the service of the employer* shall have the right to withdraw any of the amounts standing to his credit in the fund and under rule 15 distribution can only take place in the circumstances therein described.

I know of no rule of law or principle of equity which empowers a court to dissolve a trust in circumstances where only a majority of beneficiaries require their shares to be paid out to them.

I am of the opinion that this fund can be wound up only in the circumstances set out in rule 24 or perhaps in accordance with the *unanimous* vote of all its members. On the latter I need express no opinion for objections have been filed by some of the members against the termination of the fund and the realisation of its assets.

The application is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Chor Pee & Hin Hiong; Rodyk & Davidson.*

MOHAMED ABDULLAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) August 6, 1965]

[Penang — Criminal Appeal No. 9 of 1965]

Customs and Excise — Dutiable goods — False declaration — Whether declaration required by Ordinance — Place of import — Customs Ordinance, 1952, ss. 75(1) & 129(1)(a) and (2).

The appellant a clerk in the forwarding department of a lighterage and stevedoring company signed a set of customs declaration forms as agent for the importers. The declarations were signed by the appellant at Penang and tendered to the customs at Butterworth by the driver of the lorry. The declaration was found to be incorrect and the appellant was charged and convicted for making a false declaration. On appeal it was argued that: (a) the declaration was not one required by the Ordinance for the purposes of section 129(1)(a) of the Ordinance and (b) the "Customs Warehouse, Butterworth" specified in the charge was not a place of import within the proviso to section 75 of the Customs Ordinance in the absence of evidence to that effect.

Held: (1) the declaration was one required by the Ordinance for the purposes of section 129(1)(a) of the Customs Ordinance, 1952, as it was a declaration enjoined by the proviso to section 75(1) of the Ordinance;

(2) that Butterworth was the place of import for the purposes of section 24 of the Customs Ordinance,